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DECISION



21207
THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

Sept.

FILE: B-201971

DATE: March 19, 1982

MATTER OF: Participation of Special Indian Trust Funds in
Interior Department's Merit Pay System Pool

DIGEST: Bureau of Indian Affairs (BIA), Department of the Interior, questions whether certain special Indian trust funds it administers may participate in the Department's merit pay system pool where small amounts of the special funds are commingled with appropriated funds. Although the special funds are derived from the sale of Indian resources, tribal funds and the operation of irrigation and power projects, they are appropriated either by their terms on a permanent basis or in annual appropriations acts and are available for the salaries and expenses of employees whose services benefit them. Trust nature of funds creates no legal impediment to the commingling of small amounts of funds with other appropriated funds in a merit pay system pool because merit pay withholdings are part of statutorily authorized compensation package.

The Assistant Secretary for Policy, Budget, and Administration, Department of the Interior, requests our opinion on an issue that has arisen in implementing the Merit Pay System contained in 5 U.S.C. § 5401 et seq. within the Department. The Bureau of Indian Affairs, an organizational element of the Department, administers several special funds for the benefit of certain Indians. These funds are derived from Indian owned resources or Indian labor. The Assistant Secretary questions whether these special funds can be legally commingled with the Bureau's regular appropriated funds for the purpose of forming a merit pay fund pool. We perceive no legal impediment to commingling these funds.

Under the Merit Pay System, Federal managers and supervisors in grades GS-13 through 15 compete for financial rewards given to those with the highest rated job performances. The funds that would normally have been used to grant these managers and supervisors within grade and quality step increases, as well as up to one half the annual comparability increase under the pre-merit pay system, are withheld. Prior to the beginning of each fiscal year, these withheld funds are withdrawn from each separate appropriation available to the agency for personnel salaries and placed in a merit pay system pool. Selected managers and supervisors are awarded merit pay out of this pool. See our decision Matter of Funding the Merit Pay System under the Civil Service Reform Act, B-195775, September 10, 1979.

The Department of the Interior has described three funds that are representative of the special Indian funds, which are (1) Indian moneys, proceeds of labor; (2) tribal funds; and (3) funds derived from the operation of an irrigation and power system.

The first and second special funds were authorized in the Act of March 3, 1883, 22 Stat. 125 (25 U.S.C. § 155) making appropriations for the deficiencies in appropriations in that fiscal year. Although that provision has been amended, its substance remains unchanged and currently reads as follows:

"§ 155. Disposal of miscellaneous revenues from
Indian reservations, etc.

"All miscellaneous revenues derived from Indian reservations, agencies, and schools, except those of the Five Civilized Tribes and not the result of the labor of any member of such tribe, which are not required by existing law to be otherwise disposed of, shall be covered into the Treasury of the United States under the caption 'Indian moneys, proceeds of labor', and are hereby made available for expenditure, in the discretion of the Secretary of the Interior, for the benefit of the Indian tribes, agencies, and schools on whose behalf they are collected, * * *."

The third special fund results from the operation of the San Carlos Irrigation Project. See 41 Comp. Gen. 235 (1961). This project derives funds from the sale of power and irrigation water and the handling of these receipts are governed by 31 U.S.C. § 725s- 1 through 3, which provide as follows:

"§ 725s-1. Indian irrigation projects; deposit of
assessments as trust fund; disposition
of fund

"Effective August 7, 1946, collections made from water users on each Indian irrigation project on account of assessments levied to meet the cost of operating and maintaining such project shall be deposited into the Treasury for credit to a trust-fund account pursuant to section 725s of this title, and shall be available for expenditure in carrying out the purposes for which collected.

"§ 725s-2. Same; amounts creditable to fund

"There shall be credited to each trust-fund account established under section 725s-1 of this title the excess, if any, of (1) the unexpended balance of any repealed special fund appropriation to which operation and maintenance collections were credited prior to July 1, 1935, and (2) the amount of receipts covered into the Treasury pursuant to section 725c of this title, over expenditures from appropriations provided for the operation and maintenance of the irrigation project from which such unexpended balance or receipts were derived, and the amount so credited shall be subject to expenditure as prescribed in section 725s-1 of this title.

"§ 725s-3. Same; appropriation and disposition of power revenues

"Revenues collected after August 7, 1946 from power operations on each Indian irrigation project and deposited into the Treasury for credit to miscellaneous receipts pursuant to section 725c of this title, or pursuant to other provisions of law, are authorized to be appropriated annually, in specific or in indefinite amounts, equal to the collections so credited, for the following purposes in connection with the respective projects from which such revenues are derived: (1) Payment of the expenses of operating and maintaining the power system; (2) creation and maintenance of reserve funds to be available for making repairs and replacements to, defraying emergency expenses for, and insuring continuous operation of the power system, the fund for each project to be maintained at such level, within limits set by the Director of the Office of Management and Budget, as may from time to time be prescribed by the Secretary of the Interior; (3) amortization, in accordance with the repayment provisions of the applicable statutes or contracts, of construction costs allocated to be returned from power revenues; and (4) payment of other expenses and obligations chargeable to power revenues to the extent required or permitted by law."

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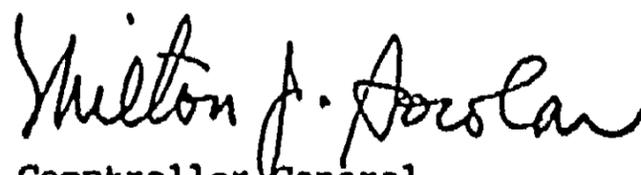
The funds under discussion here are all derived from revenues collected from various projects which must be used for the benefit of Indian tribes. Except for the fund composed of power revenues from Indian irrigation projects, all are trust funds.

Expenditures from all three of the special funds are appropriated, either by their terms on a permanent basis or in annual appropriation acts. All three also are available for the payment of salaries and expenses of Interior employees whose duties are related to the purposes of the various funds.

The potential difficulty in using withholdings from these funds for deposit in a merit pay pool which also includes employees paid from Interior's other appropriations is that some special fund moneys might end up being used for merit payments to employees whose services have not been for the benefit of the special funds. Since the use of all three funds is limited by law to furthering the purposes of the particular fund involved, a question is raised as to whether special fund employees may be included in a merit pay pool of this sort.

In B-195775, supra, we held that in view of the flexibility provided Federal managers by the Civil Service Reform Act (5 U.S.C. § 5401 et seq.) in administering the merit pay program, agency-wide implementation of merit pay is authorized. In other words, funds from various appropriation accounts for salaries in a given agency may be merged into and distributed from a single merit pay pool within the agency. We stated that the requirements of 31 U.S.C. § 628 and § 628-1 that appropriations be used only for the purposes for which made and that there be no improper transfers between appropriation accounts did not preclude funding of merit pay on an agency-wide basis.

The trust nature of these funds does not require different treatment, in our view. The compensation of employees providing services to these funds is obviously a legitimate fund expense. Federal employee compensation under the Civil Service Reform Act includes a merit pay component for eligible employees which replaces amounts which otherwise would have been paid as within-grade increases, quality step increases, or full cost-of-living increases. Since these merit pay withholdings are part of the statutorily authorized compensation package, we perceive no reason they may not be charged to the funds benefitting from the services of eligible employees and deposited in a merit pay pool which includes employees of the funds and employees of other segments of the Bureau of Indian Affairs.

for 
Comptroller General
of the United States